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Canada. National Energy Board
Report to the Governor in
the matter of the applications
under the National Energy Board
Act of Niagara Gas Transmission
Limited

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Canada National Energy Board

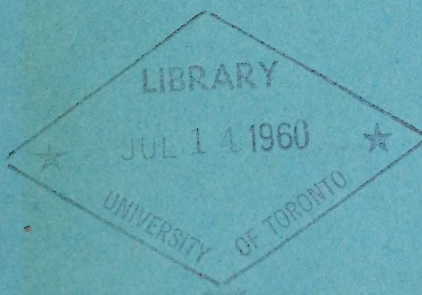
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REPORT TO
THE GOVERNOR IN COUNCIL

In the Matter of the Applications under
The National Energy Board Act



of

Niagara Gas Transmission Limited

MAY 31st 1960

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INTRODUCTION

The Board, in accordance with the authority conferred upon it by the National Energy Board Act, held a public hearing commencing May 4 on an application of Niagara Gas Transmission Limited (a company having authority under a special Act of Parliament and hereinafter called "Niagara Gas" or "the applicant") for:

I. A Licence under Part VI of the Act to export to St. Lawrence Gas Company, Inc. (hereinafter called "St. Lawrence") at a point on the international boundary between Canada and the United States of America near the Municipality of Cornwall in the Province of Ontario, the maximum daily, the annual and the total volumes of gas set out below during the period ending June 30, 1980:

Maximum daily volume	16,710,000 cubic feet of gas
Annual volume	3,765,700,000 cubic feet of gas
Total volume	73,521,750,000 cubic feet of gas;

II. A Certificate under Part III of the Act authorizing the applicant to construct and operate a gas transmission pipe line connecting with the pipe line of Trans-Canada Pipe Lines Limited (hereinafter called "Trans-Canada") at a point in Stormont County and running to a point on the international boundary between Canada and the

United States of America near the Municipality of Cornwall, together with works connected therewith.

In order to expedite the hearing of the application, Niagara Gas was permitted by Board Order GH-1-60 to incorporate as evidence certain findings of the Board, which form part of its Report to the Governor in Council dated March 21, 1960, and the supporting evidence received by the Board at its public hearings from January 5 to February 12, 1960, at which time an earlier application by Niagara Gas had been heard and considered. In summary, these are:

- (a) The reserves and deliverability of gas are adequate to meet the commitments of Trans-Canada, including the volumes of gas necessary to enable the export for which a licence is sought by this applicant;
- (b) The Massena-Ogdensburg New York State area could be expected to absorb the quantities of gas at the prices which were given in the evidence at the first hearing;
- (c) The applicant's proposed facilities for which a certificate is sought are adequate to transport the volumes of gas which Niagara Gas has applied to export, and under the circumstances, the estimated cost of the proposed facilities of approximately \$450,000 is reasonable;
- (d) The engineering and construction of the line proposed

by the applicant are generally satisfactory to the Board;

- (e) The quantity of gas proposed to be exported by the applicant does not exceed the surplus remaining after due allowance has been made for the reasonably foreseeable requirements for use in Canada having regard to the trends in the discovery of gas in Canada;
- (f) The price to be paid by Niagara Gas to Trans-Canada for the gas sought to be exported is fair and reasonable in relation to the price at which gas is available to Trans-Canada's Canadian customers in the eastern rate zone of Trans-Canada;
- (g) Such further and other evidence at the first hearing or findings of the National Energy Board in its said Report thereon to the Governor in Council, as counsel for the applicant might advise and the Board permit.

Niagara Gas, a wholly-owned subsidiary of The Consumers' Gas Company (hereinafter called "Consumers'") proposes to purchase gas from Trans-Canada near Cornwall, Ontario, to transport it to the international boundary for sale to St. Lawrence, another wholly-owned subsidiary of Consumers', for distribution in St. Lawrence County. This County of upper New York State is not presently served with natural gas.

This gas would be distributed by St. Lawrence through

a pipe line system to be constructed from Massena on the east to Ogdensburg on the west, providing service also to such communities as Norfolk, Norwood, Potsdam, Canton, Madrid and Waddington.

In its application Niagara Gas submitted a new proposal regarding the price to be charged by Niagara Gas at the border and further evidence regarding the market area in the United States to which it proposes to supply Canadian Gas.

BORDER PRICE

In its Report of March 1960 the Board stated that "Although the Board is satisfied that the price to be paid to Trans-Canada is just and reasonable, the Board is not satisfied with the proposed arrangements between Niagara Gas and St. Lawrence for the recovery of Niagara Gas' costs for transmitting the gas to the point of export. The Board believes the border price should represent Niagara Gas' purchase cost of gas plus a cost of service charge which would allow depreciation of the export facilities to be fully recovered during the term of the export licence plus a fair rate of return on the capital invested in the facilities.".

The present application was accompanied by a Letter Agreement dated April 8, 1960 between St. Lawrence and Niagara Gas which provides, among other things, for the sale

to St. Lawrence at a price which is equal to the cost of gas supplied to Niagara Gas by Trans-Canada plus a cost of service to produce annually an amount which will reimburse Niagara Gas for:

- (a) its operation and maintenance charges on the proposed 12-inch pipe line,
- (b) depreciation on the proposed pipe line at five per cent per annum on a straight line basis, and
- (c) taxes on the proposed pipe line;

and which will also give Niagara Gas a rate of return per annum on its net investment rate base in the proposed pipe line (after depreciation) of $7\frac{1}{2}$ per cent after taxes on income.

The effect of the new contract between Niagara Gas and St. Lawrence, it is estimated, will be to raise the border price by 2.06 cents per Mcf in the first year. This increase, however, will progressively decline over the 20-year period of the licence. This figure is, of course, an estimate. The essential point is that the Agreement now provides that in any year the full cost of transmitting gas to the point of export will be recovered by Niagara Gas in that year and the full cost of the original facilities will be recovered over the period of the licence.

St. Lawrence proposes to absorb any increase in the price at which it purchases gas from Niagara Gas under the new contract rather than to secure additional revenue from

consumers in St. Lawrence County. Evidence was submitted to indicate that such a proposal would not adversely affect St. Lawrence's plans to finance its project.

Niagara Gas indicated that it had, in a letter dated May 2, 1960, entered into an Agreement with Trans-Canada to purchase "winter peaking service" gas for the period November 1, 1960 to March 31, 1961. The maximum daily volume of gas under the proposed contract would be 2,000 Mcf and the maximum volume for the period would be 30,000 Mcf. The price to be paid by Niagara Gas to Trans-Canada would be 75 cents per Mcf. This price is comparable with prices paid by Canadian distributors for supplies of winter peaking gas.

St. Lawrence estimated its cost of peaking gas, manufactured from propane, at \$1.45 per Mcf. The record indicates that St. Lawrence plans in the future to provide peak shaving capacity of approximately 50 per cent of its estimated peak day requirements for natural gas, a matter which the Board considers an integral feature of the application.

The Board is satisfied that the border prices to be charged by the applicant for gas to be exported are just and reasonable in relation to the public interest in Canada.

MARKET TO BE SERVED

In its Report of March 1960, the Board stated that it was "satisfied that in general the area under discussion could be expected to absorb the quantities of gas at the prices which were given in the evidence". As St. Lawrence proposes to absorb any increase in the price at which it will purchase gas from Niagara Gas under the new contract, this earlier finding of the Board remains unchanged.

In its report on the first application of Niagara Gas, the Board noted that section 83 of the Act requires the Board, upon application for a licence, to have regard to all considerations that appear to it to be relevant, in addition to requiring the Board to satisfy itself on the particular matters of supply and price. There are in this case certain other considerations which appear to be materially relevant.

Enlarging on this subject, the Board at that time made particular reference to the fact that the application covered only the volumes of gas anticipated to be required in the market area on the basis of estimating the level of sales to 1963 and a projection at that level to the end of a 20-year period, and noted that

"Since, so far as the record indicates Trans-Canada would be the sole source of supply for the area to be served by St. Lawrence, acceptance of the present

application either would imply acceptance of some responsibility to supply, within a short period and thereafter, additional gas to meet the load growth of the area, or else would imply a rather casual view by the Board of the responsibilities of Canada in commencing a strictly limited supply of gas to a wholly dependent export market. Neither implication is acceptable to the Board."

At the Board's request, Niagara Gas with its new application presented an estimate of the maximum cumulative requirements which might develop in the St. Lawrence County area of upper New York State over the 20-year period for which the export licence is sought. The witness emphasized that the estimate presented is a generous one in that it includes greater volumes of gas than would be included in a forecast made for financing purposes. According to his estimate, the total cumulative demand for gas in the area will not exceed 115,582 million cubic feet for the 20-year period 1960 to 1979. This estimate of total requirement is some 42,000 million cubic feet more than the 73,500 million cubic feet requested in the application.

Regarding the possible extension of the service area of St. Lawrence beyond St. Lawrence County, a matter raised in the intervention of Niagara Mohawk Power Corporation (hereinafter called "Niagara Mohawk") and New York State Natural Gas

Corporation (hereinafter called "New York Natural"), Mr. Jones, Vice-President and General Manager of Niagara Gas, stated unequivocally that it was not contemplated that St. Lawrence would extend its marketing of Canadian gas beyond St. Lawrence County. Consequently, the Board has not taken into account any requirements for a more extensive area and would expect that any such extension, where associated with supplies of Canadian gas from Niagara Gas, would be the matter of a further application prior to any such event.

St. Lawrence has made the necessary related applications to the New York Public Service Commission and to the Federal Power Commission. Before both regulatory bodies St. Lawrence was opposed and a competitive application put forward by Niagara Mohawk and New York Natural. The New York Public Service Commission reserved its decision, pending the decision of the Federal Power Commission.

The Presiding Examiner of the Federal Power Commission on April 8, 1960 issued his report on the application of St. Lawrence in which he ordered, subject to review by the Commission on appeal or review by the Commission by its own motion, as provided by its Rules of Practice and Procedure, that subject to certain conditions the application of St. Lawrence should be authorized. At the same time, the Examiner concluded that the rival application of New York Natural to supply the area through Niagara Mohawk should be denied.

If the Federal Power Commission were to see fit to approve the application of St. Lawrence, both the adequacy and security of the market proposed to be served by the Niagara Gas export could be considered to have been confirmed.

Any application for the export of gas to areas where Canada would be the sole source of supply tends to emphasize a number of problems which may be relevant but less distinguishable in instances of gas export to areas simultaneously supplied from other sources. There is, for example, the question of the effect of exports of gas on the competitive position of industries in the two countries. In this instance it is proposed to export gas to an area of the United States adjacent to important industrial centres in Canada, and the proposed sales include considerable volumes of gas to industry on a firm and on an interruptible basis.

St. Lawrence submitted that the industrial growth potential of St. Lawrence County is very limited. On the matter of price, St. Lawrence proposes to sell firm and interruptible industrial gas at the following rates:

Firm	-	\$4.60 per month per Mcf of daily contract demand and a commodity charge of 50¢ per Mcf;
Interruptible	-	50¢ per Mcf.

The Board takes notice of the fact that, according

to the public records of the Ontario Fuel Board, gas is available to industry in southwestern and central Ontario under the established rates of the public utilities on terms at least as favourable as those St. Lawrence will offer in St. Lawrence County.

Questioned as to any possible advantage to the industries in St. Lawrence County, relative to industry in Ontario, accruing from the proposed export sales by Niagara Gas, Mr. Clarkson, Deputy Minister of the Ontario Department of Energy Resources, indicated that his department had considered the matter and had concluded that "there was not any evidence that there would be competitive industry moving into here, into this area (St. Lawrence County) to the disadvantage of Ontario industry".

The Board also considered the advisability of permitting exports of gas at this eastern extremity of Trans-Canada's facilities. This involved the ability of Trans-Canada to continue to supply the gas over the period without impairing its capacity to meet potential peak day requirements of Canadian consumers. Trans-Canada supported the export application and, aside from establishing the fact that sales would be profitable to it, the company did not foresee any material effect on its system. This is essentially because volumes of gas involved in the export application are relatively small.

The applicant maintained that the customers of Trans-Canada would reap some advantages from this export. In the first instance the sale of the gas by Trans-Canada to Niagara Gas would, particularly in the early years, tend to reduce Trans-Canada's average costs. Mr. Jones also anticipated that the overhead costs of Consumers' would be reduced somewhat by reason of St. Lawrence paying for managerial and expert services provided by that company. He argued that Canada had a special interest in this export in that any profits from distribution in the United States, as well as those arising from the production and transmission to the border, would accrue in Canada.

The Board feels it would be generally consistent with Canadian-United States relations to allow the export of gas to small communities lying adjacent to the international boundary where this does not cause undue difficulties in Canada. In this instance the volume of gas involved is small and the proposed export, under the conditions which will apply, appears to the Board unlikely to cause embarrassment either to Canada or the United States.

INTERVENTIONS

Trans-Canada Pipe Lines Limited and the Province of Ontario intervened in support of the application. Niagara Mohawk and New York Natural intervened in opposition.

Trans-Canada Pipe Lines Limited

Trans-Canada indicated that its supply position had improved considerably even within the brief interval since the hearing of the first application of Niagara Gas. As the Board had taken into account the trends in discovery of new gas reserves in its assessment of the availability of gas for export purposes, the evidence confirms the Board's earlier findings on reserves rather than adds to the reserves available for export. Trans-Canada also indicated that the financial return on capital investment attributable to provision of service to Niagara Gas would be higher than its average return. The company also contended that the flexibility of its system in meeting peak day requirements in Canadian markets would not be adversely affected by the relatively small volume of gas to be sold to Niagara Gas for export; nor would such sales cause any increase in costs of gas to Trans-Canada's customers.

Province of Ontario

The Province of Ontario supported the application of Niagara Gas. The Deputy Minister of the Ontario Department

of Energy Resources was satisfied that the Company, in the present application, had "resolved those matters which in the original application could be construed as being in conflict with the public interest". In particular, Mr. Clarkson had been reassured regarding the price of gas to domestic consumers in Ontario, relative to proposed sales in the export market, and he did not anticipate any disadvantage to industry in Ontario arising out of the proposed exports of gas. He noted that the estimated cumulative requirements of this export market only amounted to between one per cent and two per cent of the annual requirements of the Province of Ontario as estimated by the National Energy Board.

New York State Natural Gas Corporation
and
Niagara Mohawk Power Corporation

New York Natural, a subsidiary of Consolidated Natural Gas Company, is incorporated in New York State and engaged in producing, purchasing, transporting and storing natural gas. Niagara Mohawk is a non-affiliated customer of New York Natural under a requirements contract. Both these intervenors opposed the granting of the application of Niagara Gas for an export licence.

New York Natural and Niagara Mohawk are associated in applications pending before the Public Service Commission of New York and the Federal Power Commission in competition

with St. Lawrence. The Public Service Commission of New York has deferred its decision pending the outcome of the proceedings of the Federal Power Commission. Although the Federal Power Commission has not ruled on this matter, the decision of the Examiner dated April 8, 1960 concluded that "a Certificate for the proposed sales by New York Natural to Niagara Mohawk should not be issued".

Niagara Mohawk and New York Natural intervened jointly before this Board. Their first contention was that the Board had no jurisdiction to hear the application of Niagara Gas. They maintained that the application was for the identical certificate and licence which the Board had refused to grant in its decision of March 21, 1960 and, because that decision was final and conclusive under Section 19 (1) of the Act, the Board could not entertain the present application. Furthermore, it was argued, no new evidence had been submitted by the applicant.

After careful consideration of this contention, the Board concluded that the argument could not prevail and it was rejected. While the present application seeks both a certificate and a licence, which are similar or identical to those previously applied for, the present application is founded on new and substantial evidence and thus is, in effect, an entirely new application. Nothing in the National Energy

Board Act precludes the Board from proceeding in the manner in which, in fact, it has proceeded, and indeed, the Act requires the Board to hear and dispose of all properly constituted applications brought before it. The Board has concluded that in all respects, this application was well-founded.

It was argued by the intervenors that the higher price of gas at the border would place a "heavier obligation" on St. Lawrence with consequent effects on the feasibility of financing the project. As the applicant did not seek leave to export the total estimated requirements of the export market area for the period of the licence, a further application, it was contended, was inevitable as no alternative to Canadian sources of supply would be available to St. Lawrence. The intervenors also questioned the intention of St. Lawrence to restrict sales to the St. Lawrence County.

It was suggested that any initial advantage to Trans-Canada from sales to this export market could better be secured by sales to the intervenors. Niagara Mohawk and New York Natural repeated their interest in securing supplies of interruptible gas from Canada and referred to the pipe which has already been installed under the Iroquois lock of the St. Lawrence Seaway and the sleeves built into the adjoining Iroquois Dam for the insertion of carrier pipe at a future date. Such sales could be on a short-term and interruptible basis although a minimum volume of firm gas would

be purchased if required for pipe line financing purposes. The intervenors argued that since their main supply of gas would come from other sources, such an arrangement would not raise for Canada the problems associated with becoming the sole source of supply for an export market.

DISPOSITION OF THE APPLICATION

The Board has given due consideration to all the evidence presented to it and to the objections and representations made by all interested parties who appeared in respect of this application to export gas.

The Board has satisfied itself that the gas applied for by Niagara Gas for export purposes is within the surplus which the Board estimated in its March 1960 Report to be available after due allowance has been made for the reasonably foreseeable requirements for use in Canada, having regard to the trends in the discovery of gas.

The Board has further satisfied itself that the price to be charged by the applicant for the gas to be exported is just and reasonable in relation to the public interest.

Similarly, after hearing the evidence from the applicant and interested persons in respect of the application for a certificate of public convenience and necessity to construct and operate its proposed pipe line, the Board is satisfied that it is and will be required by the present and future public convenience and necessity.

In coming to this conclusion the Board took into account all matters which to it appeared relevant including the availability of gas to the proposed pipe line, the existence

of potential markets for the gas to be transmitted, the economic feasibility of the line, the financial responsibility and structure of Niagara Gas, the proposed methods of financing the line and the extent to which Canadians will have an opportunity of participating in financing, engineering and construction.

The Board is prepared to issue to Niagara Gas a licence to export gas to St. Lawrence Gas Company Inc. at a point on the international boundary between Canada and the United States of America near the Municipality of Cornwall in the Province of Ontario, and a certificate of public convenience and necessity in respect of its proposed pipe line.

With regard to the licence, it is emphasized that the Board cannot undertake to issue a licence in the future to meet any incremental demand in the export market area to be supplied by Niagara Gas. The Board is required to consider each application for an export licence in the circumstances existing at the time of the application and, of course, the Board cannot commit the Governor in Council to validate any licence which the Board might issue in the future.

The licence, therefore, will be issued on a clear understanding by all parties concerned that the decision herein does not imply any responsibility to approve any

subsequent application for additional gas or for a longer term of export. The licence is also issued on the clear understanding that the market to be served is limited to the St. Lawrence County of New York State.

The licence shall include the following terms and conditions:

- (1) The term of the licence shall be for a period commencing on the date of issue and ending on the 30th day of June, 1980;
- (2) The quantity of gas that may be exported under the authority of the licence shall not be more than 16,710,000 cubic feet of gas in any one day, nor more than 3,765,700,000 cubic feet of gas in any consecutive twelve-month period, nor more than 73,521,750,000 cubic feet of gas during the term of the licence;
- (3) The prices to be received from time to time by Niagara Gas for the gas to be exported hereunder shall be not less than those prices to be paid by the applicant to Trans-Canada as set forth in the Agreement dated May 27, 1959 as amended by letters dated December 21, 1959 and March 31, 1960 and in the Letter Agreement dated May 2, 1960, both Agreements being between the applicant and Trans-Canada, plus the full cost of service incurred in trans-

mitting the gas through the facilities of the applicant to the international boundary as set forth in the Letter Agreement dated April 8, 1960 between Niagara Gas and St. Lawrence; and any contracts and amendments thereto made pursuant to the said Agreements, and any amendments made to the said Agreements shall be subject to approval by the Board;

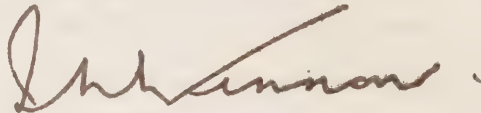
- (4) The quantity, specific gravity and higher heating value of all gas exported under the authority of and in accordance with this licence shall be measured in a manner approved by the Board;
- (5) The effective commencement date of the exportation of gas under the licence shall be on or before the 31st day of December, 1960, unless upon application by Niagara Gas a later date is set by the Board and approved by the Governor in Council.

The certificate of public convenience and necessity shall be subject to the following terms and conditions;

- (1) The pipe line shall be the property of and be operated by Niagara Gas;
- (2) Niagara Gas shall, prior to September 1, 1960, satisfy the Board that arrangements have been completed for financing the construction of the pipe line and that such construction will commence by

- November 1, 1960, unless upon application by Niagara Gas, later dates are set by the Board and approved by the Governor in Council;
- (3) The construction of the pipe line shall, unless otherwise authorized by the Board, be in accordance with the specifications set forth in Exhibits 39 and 90 filed with the Board in support of a previous application by Niagara Gas dated November 24, A.D. 1959.

All of which is respectfully submitted,



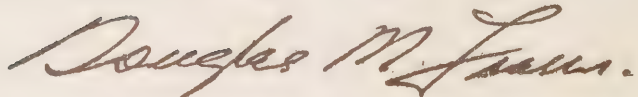
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Report to the Governor in
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